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TO RUEATRS/DEPT OF TREASURY WASHDC
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INFO RUEHOO/CHINA POSTS COLLECTIVE
RUEHFR/AMEMBASSY PARIS 0323
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STATE FOR EAP/CM AND EEB/IFD/OIA, TREASURY FOR JOHN
HARRINGTON, EMBASSY PARIS FOR USOECD O'REILLY

E.O. 12958: N/A
TAGS: [EFIN](#) [ECON](#) [HK](#)
SUBJECT: HONG KONG SUBMITS TAX AMENDMENTS, HOPES TO AVOID
TAX HAVEN LABEL

REF: A. HONG KONG 40
[1](#)B. HONG KONG 540

[1](#)1. (SBU) Summary: Amendments that will bring Hong Kong into compliance with OECD 2004 standards for Exchange of Tax Information were submitted to the Legislative Council July 8. Hong Kong officials hope these amendments will boost Hong Kong's competitiveness as an international financial center and prevent Hong Kong from being penalized as a "tax haven." Legislators are likely to raise privacy issues, but the government is confident its proposed safeguard measures will allay those concerns. Financial Services and Treasury Undersecretary Clement Leung expects the measures to pass before the end of 2009. End Summary.

[1](#)2. (U) The Hong Kong Government has drafted amendments to its Inland Revenue Ordinance that will enable Hong Kong to adopt OECD 2004 standards for Exchange of Information (EoI) with comprehensive double taxation agreement (DTA) partners. The amendments were submitted to the Legislative Council (LegCo) on July 8 for their first reading. Undersecretary for Financial Services and the Treasury Clement Leung said LegCo is likely to establish a committee to review the bill today and may meet over the summer recess to consider these non-controversial amendments.

[1](#)3. (U) Hong Kong already has DTAs with five partners: Belgium (2003), Thailand (2005), Mainland China (2006), Luxembourg (2007), and Vietnam (2008), but these agreements are based on the 1995 OECD EoI provisions. The 1995 provisions allow tax authorities to refuse to collect and supply information requested by partners if that information is not normally needed for domestic tax purposes. Hong Kong's failure to adopt the updated measures has put current negotiations with eleven other jurisdictions on hold, said Leung. The new draft plugs this loophole and specifically authorizes Hong Kong's Inland Revenue Department (IRD) to collect and share information requested by DTA partners.

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Safeguard Measures to Protect Privacy
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[1](#)4. (U) Leung said the government drafted these measures with the expectation that lawmakers' primary concern will be for the privacy of Hong Kong-based financial information. The Financial Services and Treasury Bureau has included strict safeguards to protect an individual's right to privacy and the confidentiality of any information provided. These safeguards will be incorporated into each DTA and subject to vetting by LegCo. Each request for information exchange must be case-specific (the measures will not allow automatic or wholesale information exchanges) and limited to

treaty-approved categories. In addition, the requesting party must satisfy IRD that the information requested is necessary or relevant to enforcement of its own tax laws. Information exchanged must be kept confidential and the requesting party will not be authorized to share such information with third parties. The IRD will not be obligated to provide information that requesting parties could not obtain under their own domestic laws. Finally, IRD will be required to notify individuals about whom information is sought and allow them to verify the accuracy of information shared.

15. (SBU) Hong Kong officials have shared the draft legislation with the OECD, which has expressed its support and its opinion that the amendments, if adopted, would meet OECD 2004 EoI standards. Leung noted that these amendments are part of a longer-term plan to revise the Inland Revenue Ordinance, but this bill was broken out and sent forward earlier than originally scheduled in response to bills currently under consideration in the U.S. Congress (in particular, Senator Levin's bill, the Stop Tax Haven Abuse Act), recent international pressure on jurisdictions believed to be "tax havens", and G-20 discussions. Leung expects the measures to be relatively non-controversial and predicted Legco approval before the end of 2009. The FSTB has already begun intensive consultations with Legco members, said Leung, and has encountered no substantive concerns thus far.

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